REMARKS

The foregoing amendment does not include the introduction of new matter into the present application for invention. Therefore, the Applicant, respectfully, requests that the above amendment be entered in and that the claims to the present application be, kindly, reconsidered.

The Office Action dated February 3, 2004 has been received and considered by the Applicants. Claims 1-8 are pending in the present application for invention. Claims 1-8 stand rejected by the February 3, 2004 Office Action.

The Office Action rejects Claims 1-3, and 5-8 under the provisions of 35 U.S.C. §103(a), as being unpatentable over U.S. Patent No. 5,551,077 issued to Oda (hereinafter referred to as Oda) in view of U.S. Patent No. 6,615,033 issued to Cragun (hereinafter referred to as Cragun). The Examiner states that Oda teaches all the elements of the rejected claims except for a means for starting the device at a programmable start time or a means for automatically and periodically updating a start time after said current time with the electric power supply being ensured soled by the main power source. The Examiner further states that Cragun teaches a means for starting the device at a programmable start time (column 3, lines 22-29, column 5, lines 32-38) and a means for automatically and periodically updating a start time after said current time (column 5, lines 65-67, column 6, lines 1-10) with the electric power supply being ensured soled by the main power source (column 3, lines 48-62).

The MPEP §2142 states that in order to establish "a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure."

Regarding the first requirement of a suggestion or motivation, the Examiner states that both Oda) and Cragun teach portable communication devices with power management,

therefore a person skilled in the art would find it obvious to use the programmable starting and updating means of Cragun within the device taught by Oda. The Applicant respectfully disagrees. Cragun pertains to synchronizing two communication devices allowing them to turn on simultaneously at a predetermined time. Cragun does not discuss power failure. A person skilled in the art would not be motivated to look to the methodology of synchronizing two communication devices as taught by Cragun for suggestions related to power failure in a communication device. Cragun does not discuss power failure. Neither, Cragun nor Oda suggest the combination made by the Office Action. The Office Action has not provided any teaching or motivation within either Cragun or Oda that would lead a person skilled in the art to apply the teachings of Cragun to the device of Oda.

The second requirement of a reasonable expectation of success is not met by the rejection contained in the Office Action. As stated in the MPEP §2142 the "teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure." *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The rejection contained in the Office Action has not provided any reasonable expectation of success for the combination from either of the cited references, Cragun or Oda. The rejection contained within the Office Action states that means for starting the device at a programmable start time of Cragun can be used in the device of Oda, however, there is no indication where within the cited references, Cragun or Oda, is given any indication that this combination would be effective. If the programmable start time of Cragun was applied to the device of Oda, it would be required that that user program the start time because this is what is taught by Cragun at column 5, lines 32-38. The clock of Oda is not used to provide a programmable start time. The Examiner has failed to indicate how the combination made by the Office Action would actually work. More, importantly, the rejection contained within the Office Action does not show where within the cited references that there exists a reasonable expectation of success for the combination made by the Office Action.

Moreover, the combination made by the final Office Action does not teach or suggest all the claim limitations. The Applicant would like to respectfully point out that rejected Claim 1 recites that the means for starting the device at a programmable start time includes a clock associated to an auxiliary power source, to produce a current time, and means for automatically and periodically updating a start time after said current time, the electric power

supply for the updating means being ensured solely by the main power source. Clearly, the clock as recited by Claim 1 is part of the means for starting the device at a programmable start time. The rejection made by the Office Action states that Oda does not teach means for starting the device at a programmable start time. However, the rejection made by the Office Action states that Oda teaches the clock associated to an auxiliary power source. The recitation of rejected Claim 1 is very clear in reciting that the means for starting the device at a programmable start time includes a clock associated to an auxiliary power source, to produce a current time. The Examiner in making this rejection has taken the recited element of means for starting the device at a programmable start time, which is tailored to include a clock associated to an auxiliary power source to produce a current time, and divided this element between two prior art references. The Applicant respectfully asserts that all the claimed elements are not found in the rejection made by the Office Action.

The Applicant respectfully points out that the means for starting the device at a programmable start time includes a clock associated to an auxiliary power source, to produce a current time. The Office Action cites Cragun at column 3, lines 22-29 and column 5, lines 32-38 for a programmable start time. These sections of Cragun, respectively, discuss the duty cycle having an on-time and off-time, and a user inputting the current time prior attempting to synchronize transceivers, wherein if the microprocessor determines that the user is entering duty cycle in formation it obtains the start time and the sleep time. Note that these cited sections of Cragun do not disclose, mention or suggest means for starting the device at a programmable start time that includes a clock associated to an auxiliary power source. If fact there is no clock much less a clock associated to an auxiliary power source.

The Applicant respectfully asserts that the rejection contained within the Office Action is the result of using the elements to the rejected claims as a blueprint to pick and choose the recites elements from various prior art references. As previously discussed, the rejection uses both Cragun and Oda to find the entire recitation of the means for starting the device at a programmable start time. Accordingly, Claim 1 has been amended to clearly identify that the means for starting the device at a programmable start time includes the clock that is associated with an auxiliary power source.

The Applicant respectfully draws the Examiner's attention to page 3, lines 4-5 of the specification of the present invention where "start time" is defined as a start instant and not a

calculation based on a time of day. The Applicant has the right to be a lexicographer in defining the recited claim terms. Therefore, the term "start time" is given a specific definition within the specification of the invention, and that term when recited in the claims must be interpreted consistently with the definition that is given within the specification. The Office Action has employed a start time from Cragun, that explicitly based on time of day and which is completely inconsistent with the definition of "start time" supplied by the specification for the present invention.

The Examiner states that the combination made by the Office Action render obvious the elements of rejected Claim 6. Specifically, the Examiner states that Oda teaches these elements of rejected Claim 6 except for an automatic programmable start time. The Office Action states that Cragun teaches a new start is automatically made the moment when a current time established by a permanent clock coincides with the previously updated start time. Page 3, lines 4-5 of the specification of the present invention defines "start time" as a start instant and not a calculation based on a time of day. The Applicant has the right to be a lexicographer in defining the recited claim terms. Therefore, the term "start time" is given a specific definition within the specification of the invention, and that term when recited in the claims must be interpreted consistently with the definition that is given within the specification. The Office Action has employed a start time from Cragun, which is explicitly based on time of day and completely inconsistent with the definition of "start time" supplied by the specification for the present invention.

The remaining claims depend from either Claim 1 or Claim 6 and further narrow and define these claims. Accordingly, these claims are also believed to be allowable over the cited references. Therefore, this rejection is respectfully traversed.

New claim 9-16 have been added by the foregoing amendment that are either generally of similar scope to Claim 1-8 or further define features contained within the specification for the invention. Therefore, examination of these claims should not result in the introduction of new matter into the present application for invention.

Applicant is not aware of any additional patents, publications, or other information not previously submitted to the Patent and Trademark Office which would be required under 37 C.F.R. 1.99.

In view of the foregoing amendment and remarks, the Applicant believes that the present application is in condition for allowance, with such allowance being, respectfully, requested.

Respectfully submitted,

By _____

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